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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,470	12/05/2003	Werner Franz Wilhelm Lonsky	18,693.1	1301
23556	7590	03/13/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			DICUS, TAMRA	
			ART UNIT	PAPER NUMBER
			1774	
DATE MAILED: 03/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/729,470	Applicant(s) LONSKY ET AL.	
	Examiner Tamra L. Dicus	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07-30-04, 10-25-04, 3-02-04</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-3, 13-15, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 2-3, 13-15, and 35 are rendered indefinite because it is unclear as to what b-values or brightness values are attributed to. As per the instant specification on page 12, lines 27-35 and the Examples show that the b-value is attributed to the consumer product and not necessarily the UV film but the claims appear to recite the consumer product having this property. Thus it is not clear from the instant claims and confliction with the instant specification which property the b-value is to.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7-9, 11-16-17, 19-21, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al., U.S. Publication 2003/0093049 in view of Fagerburg et al., U.S. Patent Number 5,558,912.

Johnson discloses a film wrapping element per instant claims 11 and 23 for an absorbent article wherein the film comprises first and second polymeric components (see abstract and [0007, 0016, 0017]). The reference also discloses that the first component comprises polyester resins as per instant claims 1, 7, 10 and 15 (see paragraph 0024). Additionally, the Johnson reference discloses that the first component can comprise UV absorbers, inorganic or organic fillers as per instant claims 8-9, 20-21, 30-31, and 38-39 (see paragraph 0026). Applicant's disclosure defines consumer products as being facial tissues, paper towels, bath tissues and the like. The consumer products defined in the disclosure are absorbent articles comprised of cellulose. The absorbent articles in the Johnson reference are cellulosed based. Cellulosed-based absorbent articles have a change in brightness about 5 percent or less during and exposure to light for a period of about 12 months or more. The UV absorbers in the film can deflect and/or absorb light having a wavelength 280 to 435 nm. Johnson teaches the layer contributes to the tensile strength (gauge and elongation). Johnson teaches the layer contributes to the tensile strength (gauge and elongation) and thus is capable of being stretched as per instant claims 11-12, 23-24, 29, 32, 37, and 40. Further that the film is able to be stretched is not germane since it has been held that an element that is "being able to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138. Language that suggests or makes optional

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but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.

The Johnson reference does not disclose the b-values or brightness values, or deflection and/or exposure to light, as recited per instant claims 1-3, 13-15, 25-28, 33-34, and 36.

Fagerburg teaches blends of UV absorbers and polyesters in a film that show b-values are dependent upon the UV absorbers to result in a loss of yellowing over time in order to protect the film from sunlight or other UV light sources (col. 1, lines 10-20, col. 8, lines 40-60). The deflection and/or exposure to light would also be effected by the material of the film, particularly the UV absorber.

Thus it would have been obvious to one having ordinary skill in the art to have modified the Johnson reference to have b- or brightness values or deflection and/or exposure to light as recited because Fagerburg teaches blends of UV absorbers and polyesters in a film that show b-values are dependent upon the UV absorbers to result in a loss of yellowing over time in order to protect the film from sunlight or other UV light sources (col. 1, lines 10-20, col. 8, lines 40-60 of Fagerburg). The deflection and/or exposure to light would also be expected because of the material of the film, particularly the UV absorber.

6. Claims 6, 10, 12, 18, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al., U.S. Pre Grant Publication 2003/0093049 in view of Lindsay et al., U.S. Patent Number 6,610,173.

Johnson essentially teaches the claimed invention above.

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Johnson teaches the layer contributes to the tensile strength (gauge and elongation) ([0023-0025]) but does not recite the values as per instant claims 6, 12, 18, and 24. However, the gauge and elongation values are mechanical properties of the film (see [0023]).

Lindsay teaches a film having elongation and gauge effecting the web stiffness (col. 37, lines 20-45, and col. 42, lines 30-55).

Thus, it would have been obvious to one having ordinary skill in the art to have expected the values as recited because Johnson teaches the tensile (gauge) and elongation values are mechanical properties of the film (see [0023]). Further it would have been obvious because the gauge and elongation are dependent upon the stiffness of the film as Lindsay teaches. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272. Gauge and elongation effect the stiffness.

The Johnson reference does not disclose that the fibers of the consumer product (absorbent article) are BCTMP.

The Lindsay reference discloses absorbent articles such as bath tissue, facial tissue, paper towels and the like that include a final packaging of the product with a poly film (see column 33, lines 8-35). The absorbent articles in the Lindsay reference have paper webs that comprise BCTMP fibers. The BCTMP fibers provide consistency the paper web.

Therefore, it would have been obvious to one of ordinary skill in the art to use BCTMP fibers in order to maintain consistency so as to have a consumer product that has low brightness changes.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tamra L. Dicus
Examiner
Art Unit 1774

2-28-06



RENA DYE
SUPERVISORY PATENT EXAMINER
A.U. 1774 3/1/06